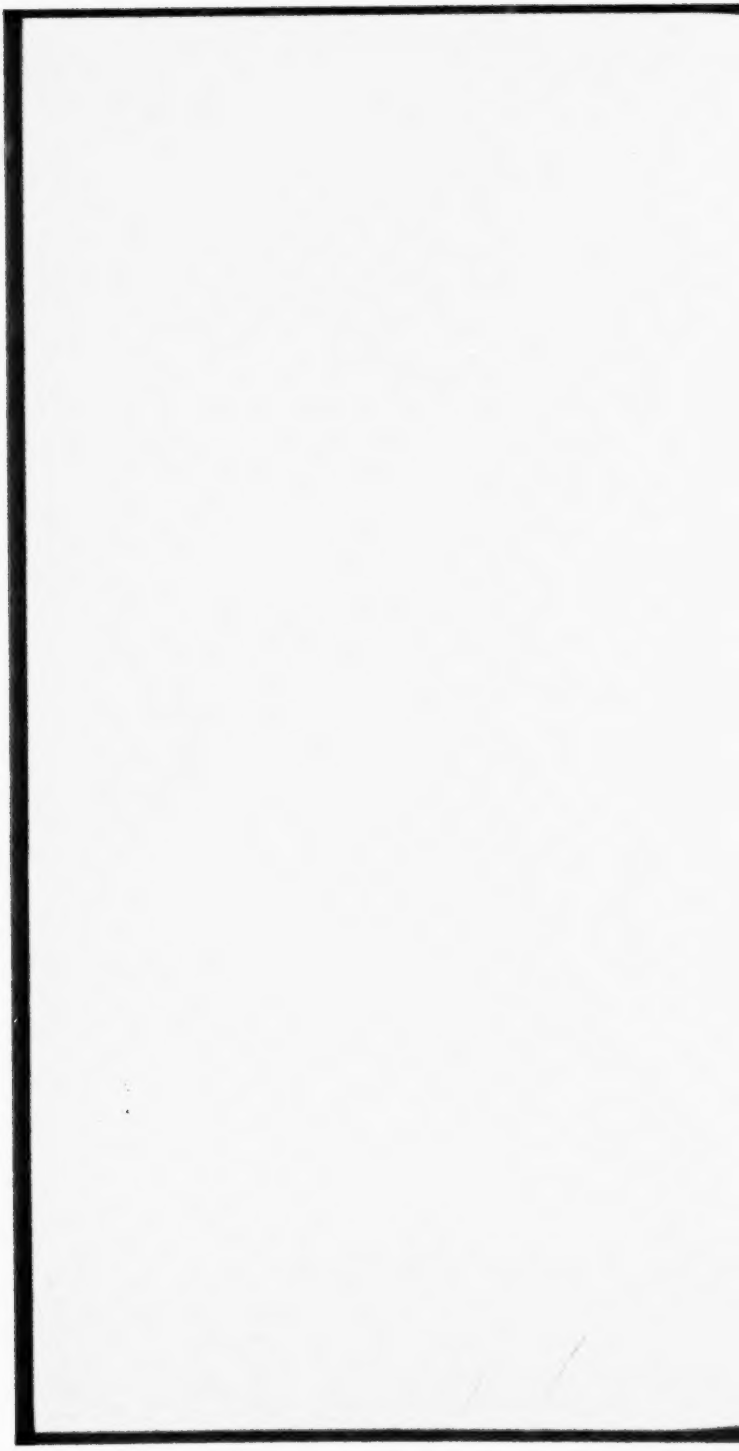

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IN THE

Supreme Court of the United States

October Term, 1974
No. 73-1429

D. ARTHUR LOWE, THELMA G. LOWE, DAVID A. LOWE, and STELLA FERN LOWE,

Petitioners,

vs.

UNION OIL COMPANY OF CALIFORNIA; TEXACO INC.; GULF OIL CORPORATION; MOBIL OIL CORPORATION,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF FOR RESPONDENTS.

Question Presented.

The opinion of the Court of Appeals for the Ninth Circuit holds that the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. §1331, *et seq.*) provides the sole method by which oil and gas resources are to be disposed of on the Outer Continental Shelf and, accordingly, possessory claims to the Outer Continental Shelf or the oil and gas resources appertaining thereto cannot be maintained by reason of placer mining locations filed pursuant to the General Mining Laws (30 U.S.C. §22 (1942)). The only question raised by the Petition is whether this opinion of the Court of Appeals is correct.

Statutes Involved.

The pertinent provisions of the Outer Continental Shelf Lands Act, 43 U.S.C. §1331, *et seq.*, are set forth in Appendix A annexed hereto.

Statement of the Case.

Respondents' motion to dismiss the first amended complaint for failure to state a claim upon which relief can be granted and for lack of jurisdiction over the United States, which is an indispensable party, was granted by the district court below on November 30, 1971. The United States Court of Appeals for the Ninth Circuit unanimously affirmed the district court's order of dismissal on November 15, 1973 and denied petitioners' Petition for Rehearing on December 26, 1973.

Each of the seven purported claims for relief contained in the first amended complaint is predicated upon the assertion that petitioners own an interest in a certain portion of the subsoil and seabed of the Outer Continental Shelf of the United States. Petitioners' claimed interest in said subsoil and seabed arises solely out of the location and filing of some 41 "placer mining locations" during the months of February through April of 1968, purportedly done pursuant to the provisions of the General Mining Laws.[1]

Respondents are oil and gas lessees of the United States under an Indenture of Lease of precisely the same parcel of the subsoil and seabed of the Outer Continental Shelf within which petitioners claim to own

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[1]See *Act of July 25, 1866*, 14 Stat. 251, 39th Cong., 1st Sess.; *Act of July 9, 1870*, 16 Stat. 216, 41st Cong., 1st Sess.; *Act of May 10, 1872*, 17 Stat. 91, 42nd Cong., 2d Sess. [30 U.S.C. Sec. 22, *et seq.* (1942)]. These Mining Claim Acts were codified and rearranged as *Revised Statutes*, 1872, Ch. 6, P. 426 (herein referred to as "General Mining Laws").

an interest. Said lease was validly issued by the Bureau of Land Management, United States Department of the Interior, on February 1, 1968, pursuant to the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. §1331, *et seq.* (1964)) and the regulations promulgated thereunder by the Secretary of the Interior (30 C.F.R., Ch. II, §250.1, *et seq.* (1969)).

In granting the motion to dismiss, the District Court concluded that the first amended complaint does not allege a valid claim to any interest in the subsoil and seabed of the Outer Continental Shelf of the United States and held that:

> "1. The General Mining Laws never applied to submerged lands.
>
> "2. The Mineral Leasing Act of 1920 (41 Stat. 437, 30 U.S.C. §193) superseded the General Mining Laws with respect to oil and gas.
>
> "3. Since 1953, the Outer Continental Shelf Lands Act (43 U.S.C. §§1334, 1337) has provided the sole method by which oil and gas resources are to be disposed of on the Outer Continental Shelf.
>
> "4. The United States of America (sued herein as the United States, Department of the Interior) is an indispensable party to the within action, and has not consented to be sued herein.
>
> "5. The United States, Department of the Interior, is not a suable entity."

In affirming the action of the District Court, the Ninth Circuit unanimously determined that the Outer Continental Shelf Lands Act provides the sole method by which oil and gas resources are to be disposed of on the Outer Continental Shelf. The Ninth Circuit declined comment on any of the other grounds enunciated by the District Court.

ARGUMENT.

I.

The Outer Continental Shelf Lands Act Provides the Exclusive Method by Which Oil and Gas Resources Are Disposed of on the Outer Continental Shelf.

The Ninth Circuit correctly concluded that the Outer Continental Shelf Lands Act provides the *exclusive* method by which oil and gas resources are disposed of on the Outer Continental Shelf. The gravamen of petitioners' argument is that a valid interest in the mineral resources of the Outer Continental Shelf can be acquired by placer mining location pursuant to the General Mining Laws as well as by mineral lease issued by the Secretary of the Interior pursuant to the Outer Continental Shelf Lands Act of 1953. The

> "*Except as otherwise provided,* all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase. . . ." 30 U.S.C. §22 [Emphasis added.]

However, when another, more specific statute provides for the disposition of lands and their mineral resources, then the General Mining Laws do not apply and interests in said lands and mineral resources cannot be acquired by placer mining location. In *Oklahoma v. Texas,* 258 U.S. 574 (1922), the Supreme Court held:

> "Only where the United States has indicated that the lands are held for disposal under the land

> laws does the section apply; and it never applies where the United States directs that the disposal be only under other laws." 258 U.S. at 600.

The history of the Outer Continental Shelf and the statutory and regulatory scheme of the Outer Continental Shelf Lands Act clearly demonstrate that the United States has "otherwise provided" by making mineral leases issued pursuant to the Outer Continental Shelf Lands Act the exclusive method of disposing of the mineral resources of such lands. The General Mining Laws have been consistently held not to apply to submerged lands. See *Shively v. Bowlby,* 152 U.S. 1 (1894); *Justheim v. McKay,* 123 F.Supp. 560, 565 (D.D.C. 1954), *aff'd* 229 F.2d 29 (D.C. Cir.), *cert. denied* 351 U.S. 933 (1956). In 1945 President Truman asserted jurisdiction and control over the Outer Continental Shelf by means of the Truman Proclamation (Proclamation No. 2667, 3 C.F.R. 1943-48 Comp., p. 67), which was accompanied by an Executive Order (Executive Order No. 9633, 3 C.F.R. 1943-48 Comp., p. 437) specifically vesting with the Secretary of the Interior administration and control over the Outer Continental Shelf:

> ". . . it is ordered that the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States declared this day by proclamation to appertain to the United States and to be subject to its jurisdiction and control, be and they are hereby *reversed, set aside* and *placed* under the jurisdiction and control of the Secretary of the

> Interior for administrative purposes, *pending the enactment of legislation* in regard thereto." 3 C.F.R. 1943-48 Comp., p. 437 [Emphasis added.]

Such an order belies any intent to subject the lands on the Outer Continental Shelf to "sale or disposition" under the General Mining Laws.

In 1953 the Outer Continental Shelf Lands Act was enacted to provide mineral leasing as the exclusive method for disposing of the mineral resources of the Outer Continental Shelf. Section 1333(a)(1) provides "That mineral leases on the outer Continental Shelf shall be maintained or issued *only under the provisions of this subchapter*." [Emphasis added.] Petitioners argue that the Act does not, however, specifically exclude other methods of exploitation. This argument is clearly refuted by the all-encompassing definition of "mineral lease" as meaning ". . . *any form of authorization* for the exploration for, or development or removal of deposits of, oil, gas, or other minerals. . . ." 43 U.S.C. §1331(c)([Emphasis added.]

Furthermore, the General Mining Laws are wholly inconsistent with the *purpose* of the Outer Continental Shelf Lands Act, which is "to provide for the prevention of waste and conservation of the natural resources of the outer Continental Shelf, ..." 43 U.S.C. §1334 (a)(1). Pursuant to authority granted in the Act, the Secretary of the Interior has promulgated extensive and detailed regulations relating to leasing and particularly to the conservation aspects thereof. 43 U.S.C. §1334 (a)(1); 30 C.F.R., Ch. II, §250.1, *et seq.* (1969). No such conservation limitations are imposed under the General Mining Laws. Under the Act, leases may

be issued "to the highest responsible qualified bidder by competitive bidding. . . ." 43 U.S.C. §1337(a). The General Mining Laws provide no requirement that a person acquiring lands thereunder be either "responsible" or "qualified" in order to remove mineral deposits therefrom.

Under the rule of *Oklahoma v. Texas, supra,* it is clear that the Outer Continental Shelf Lands Act has "otherwise provided" the exclusive method for the disposing of the mineral resources of the Outer Continental Shelf, that the General Mining Laws do not apply to such lands and their mineral resources, and that the claims of petitioners are void and cannot be sustained as against a lessee under the Outer Continental Shelf Lands Act.

II.

Petitioners' Jurisdiction and Due Process Arguments Incorrectly Assume That Petitioners Could Have Obtained a Valid Interest in the Subsoil and Seabed of the Outer Continental Shelf Pursuant to the General Mining Laws.

Petitioners argue that the Secretary of the Interior, not the courts of the United States, should have first determined whether petitioners' placer mining locations were correctly filed and that petitioners' interests in the subsoil and seabed of the Outer Continental Shelf have been taken without due process of law. Both arguments assume that petitioners could have obtained a valid interest in the subsoil and seabed of the Outer Continental Shelf pursuant to the provisions of the General Mining Laws. As indicated above, the Ninth Circuit correctly held this assumption to be incorrect, and accordingly both arguments are without factual foundation or merit.

Conclusion.

For the foregoing reasons it is respectfully submitted that this Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX A.

The pertinent portions of The Outer Continental Shelf Lands Act of 1953, 43 U.S.C. § 1331 et seq., read as follows:

Section 1331. "When used in this subchapter—

(a) The term 'outer Continental Shelf' means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 1301 of this title, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control;

(b) The term 'Secretary' means the Secretary of the Interior;

(c) The term 'mineral lease' means any form of authorization for the exploration for, or development or removal of deposits of, oil, gas, or other minerals; and

(d) The term 'person' includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation."

Section 1332(a). "(a) It is declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter."

Section 1333(a)(1). "(a)(1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however,* That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter."

Section 1333(b) "(b) The United States district courts shall have original jurisdiction of cases and controversies arising out of or in connection with any operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing or transporting by pipeline the natural resources, or involving rights to the natural resources of the subsoil and seabed of the outer Continental Shelf, and proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the adjacent State nearest the place where the cause of action arose."

Section 1334(a)(1). "(a)(1) The Secretary shall administer the provisions of this subchapter relating to the leasing of the outer Continental Shelf,

and shall prescribe such rules and regulations as may be necessary to carry out such provisions. The Secretary may at any time prescribe and amend such rules and regulations as he determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the outer Continental Shelf, and the protection of correlative rights therein, and, notwithstanding any other provisions herein, such rules and regulations shall apply to all operations conducted under a lease issued or maintained under the provisions of this subchapter. In the enforcement of conservation laws, rules, and regulations the Secretary is authorized to cooperate with the conservation agencies of the adjacent States. Without limiting the generality of the foregoing provisions of this section, the rules and regulations prescribed by the Secretary thereunder may provide for the assignment or relinquishment of leases, for the sale of royalty oil and gas accruing or reserved to the United States at not less than market value, and, in the interest of conservation, for utilization, pooling, drilling agreements, suspension of operations or production, reduction of rentals or royalties, compensatory royalty agreements, subsurface storage of oil or gas in any of said submerged lands, and drilling or other easements necessary for operations or production."

Section 1337(a). "(a) In order to meet the urgent need for further exploration and development of

the oil and gas deposits of the submerged lands of the outer Continental Shelf, the Secretary is authorized to grant to the highest responsible qualified bidder by competitive bidding under regulations promulgated in advance, oil and gas leases on submerged lands of the outer Continental Shelf which are not covered by leases meeting the requirements of section 1335(a) of this title. The bidding shall be (1) by sealed bids, and (2) at the discretion of the Secretary, on the basis of a cash bonus with a royalty fixed by the Secretary at not less than 12½ per centum in amount or value of the production saved, removed or sold, or on the basis of royalty, but at not less than the per centum above mentioned, with a cash bonus fixed by the Secretary."